TESTIMONY OF SENATOR JOHN MCCAIN
527 REFORM ACT OF 2005
SENATE COMMITTEE ON RULES
MARCH 8, 2005

Thank you, Mr. Chairman, Senator Dodd, and all of the members of the committee for allowing me to speak to you briefly about this important issue. I appreciate the opportunity to share my views with you.

I'd like to begin today by expressing my deep admiration and appreciation to Chairman Lott, not only for holding this hearing, but for being an original cosponsor of S. 271, the 527 Reform Act of 2005. His outspoken leadership has helped highlight this issue as one which needs to be addressed in a timely fashion. As always, I appreciate his hard work and his friendship.

I also greatly appreciate the opportunity to be working again on the campaign finance issue with Senator Feingold, my long time partner in these efforts, and with another member of this Committee, Senator Schumer, who helped lead the fight to enact the Bipartisan Campaign Reform Act of 2002 (BCRA) and is again helping to lead the fight for The 527 Reform Act, as a principal co-sponsor of the legislation.

In *McConnell v. FEC*, the Supreme Court wisely noted that money, like water, will look for ways to leak back into the system. With the enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA), the national parties were taken out of the soft money business. It did not take long before efforts were being made by some to bring soft money back into federal elections through the vehicle of groups that operate as "political organizations" under Section 527 of the IRS Code, or so-called "527s."

The soft money game is the same with these groups: they are raising multi-million dollar donations from wealthy individuals, as well as large contributions from corporate and union contributions, and spending that soft money on broadcast communications that promote or attack federal candidates, and voter mobilization efforts intended to influence federal elections. We saw, firsthand, how a number of 527 groups raised and spent substantial amounts of soft money in a blatant effort to influence the outcome of last year's Presidential election. These activities were prohibited under longstanding campaign finance laws but, once again, the FEC failed to properly enforce the law.

As a result, federally oriented 527s spent some $400 million on the 2004 elections. Among them were: The Media Fund, Americans Coming Together, Swift Boat Veterans for Truth, and Progress for America.

It turns out that almost half of the financing for 527 groups in the 2004 elections came from a relatively small number of very wealthy individuals who made huge soft money contributions. According to campaign finance scholar Anthony Corrado, twenty-five wealthy individuals accounted for $146 million raised by Democratic-leaning and Republican-leaning 527 groups active in the 2004 federal elections

This included ten donors that gave at least $4 million each to 527s involved in the 2004 elections and two donors who contributed over $20 million. At the same time that this was happening, the new campaign finance law was successfully accomplishing its goals. As David Broder wrote in his February 3, 2005 column in *The Washington Post*, "As one who has been skeptical of the claimed virtues of the McCain-Feingold campaign finance law, I am happy to concede that it has, in fact, passed its first test in the 2004 campaign with flying colors."

This was accomplished at the same time that the all of the predictions about how the national political parties would be financially undermined without soft money were proven to be wrong. The national political parties raised more *hard money* in the 2004 election cycle than they raised in *hard and soft money combined* during the last presidential election cycle in 2000. In fact, the Republican and Democratic national parties raised a record $1.2 billion for the 2004 elections.

And in doing so, the parties also greatly increased their small donor base and their number of contributors. Again, according to Tony Corrado, the DNC had more than 2 ½ million new donors and the RNC more than 1 million new donors in the 2004 election. David Broder pointed out in his February 3, 2005 *Post* column that "[A] solid start has been made in expanding the financial base of both parties and using the resources to bring more people into the electorate. That is all to the good."

S. 271, the bill Senators Feingold, Lott, Schumer and I introduced last month, which is cosponsored by Senators Lieberman, Snowe, Collins, Salazar, Jeffords, and Murkowski, is straightforward legislation to overcome the FEC's failure to properly interpret the original Federal Election Campaign Act.

This legislation is focused on solving the problem with 527 groups and must remain focused do so. The legislation, for example, cannot become a vehicle for unraveling or weakening the BCRA legislation that worked so well this past election. Any successful efforts to use this bill to weaken or undermine BCRA will end the opportunity to enact this legislation and to close the soft money loophole.

This bill must not be a vehicle for increasing the federal hard money limits that currently exist. These limits are already quite generous and have allowed record amounts of money to be raised by the candidates and political parties for the 2004 federal elections, while appropriately returning the focus of the political parties to smaller donors and grassroots fundraising. We cannot, and must not, go back to the days when federal officeholders were soliciting large contributions that became vehicles for obtaining access and influence

I will strongly oppose all efforts to turn this bill into a Christmas tree and will not support legislation that weakens or undermines BCRA.

The legislation we have introduced would require that 527s register as political committees and comply with federal campaign finance laws, including federal limits on the contributions they receive, unless the money they raise is spent exclusively in

connection with non-Federal candidate elections, state or local ballot initiatives, or the nomination or confirmation of individuals to non-elected offices.

This legislation also would set new rules for federal political committees that spend funds on voter mobilization efforts affecting both federal and local races and, therefore, use both a federal and a non-federal account under FEC regulations. The new rules would prevent unlimited soft money from being channeled into federal elections through abuse of the Commission's allocation rules.

Under the new rules, at least half of the funds spent on these voter mobilization activities by federal political committees would have to be hard money from their federal account. More importantly, the funds raised for their non-federal account would have to come only from individuals and would be limited to no more than $25,000 per year per donor. Corporations and labor unions could not contribute to these non-federal accounts. To put it in simple terms, a George Soros could give $25,000 per year to the non-federal account of a single political committee, as opposed to $10 million, to finance these activities.

Let me be perfectly clear on one point here, Mr. Chairman. Our proposal will NOT shut down 527s, it will simply require them to abide by the same federal campaign finance rules that every other federal political committee must abide by in spending money to influence federal elections. Nor is this bill intended to effect 501 c 3 or 4 tax exempt organizations.

Under the Internal Revenue Code, a 527 group is a "political organization," which is a group whose primary purpose is to influence candidate elections or the appointment of individuals to public office.

In other words, most 527 groups by definition are in the business of influencing campaigns and have voluntarily sought the tax advantages conferred on such political groups. These groups cannot be allowed to shirk their responsibilities to comply with federal campaign finance laws when they are spending money to influence federal elections.

The use of soft money by 527 groups to pay for ads attacking and promoting the 2004 presidential candidates was not legal. This is not a matter of the new campaign finance law; it is a requirement of longstanding federal campaign finance laws that go back to 1974. That law, as construed by the Supreme Court in *Buckley v. Valeo*, requires any group that has a "major purpose" to influence federal elections, and spends $1,000 or more to do so, to register with the Federal Election Commission as a "political committee," and be subject to the contribution limits, source prohibitions and reporting requirements that apply to all political committees.

Section 527 groups need to play by the rules that candidates, political parties and all other political committees are bound by, the rules that Congress has enacted to protect the integrity of our political process. They need to raise and spend money that complies with federal contribution limits and source prohibitions to pay for ads that promote or

attack federal candidates or otherwise have the purpose to influence federal elections. They need to spend federal funds for voter mobilization activities that are conducted on a partisan basis and will influence federal elections - just like every other political committee.

Some have raised questions about whether it is constitutional to limit contributions to political committees that operate supposedly independent of parties and candidates. I would like to submit for the record a detailed analysis of these constitutional questions prepared by Professor Daniel Ortiz, the John Allen Love Professor of Law at the University of Virginia School of Law. The memo thoroughly explains the constitutional basis for the legislation we have introduced.

As the memo points out, the Supreme Court in the *McConnell* case spoke directly to this issue and said that such limits are constitutional. The Court specifically noted that in an earlier case, *California Medical Association v. FEC*, it had upheld the $5,000 limit on contributions to political committees even as to a committee's spending for "noncoordinated expenditures." The constitutional rationale here, as in the case of the soft money ban upheld by the Supreme Court in *McConnell*, is that the legislation is designed to prevent the evasion and circumvention of federal contribution limits and prohibitions.

Mr. Chairman, the legislation we have offered would not have been necessary if the FEC had simply properly enforced the federal campaign finance laws as written by Congress in 1974 and interpreted by the Supreme Court in 1976 and reaffirmed by the Court in the McConnell case. The fact that the FEC had failed to properly enforce the law in past years, because it had erroneously interpreted the application of the law to 527 groups, is no justification for the Commission to continue misinterpreting the law after the Supreme Court made clear in *McConnell* that the FEC had been wrong.

One of the problems the FEC faces today is that some Commissioners refuse to recognize the Supreme Court's ultimate authority in this area. Then-Chairman Brad Smith's response to the *McConnell* decision was to say; "Now and then the Supreme Court issues a decision that cries out to the public, 'We don't know what we're doing!' *McConnell* is such a decision." That is an extraordinary and irresponsible statement for a public official to make whose statutory responsibility is to enforce the laws of the land as written by Congress, signed by the President, and upheld by the Supreme Court!

I believe the FEC needs to do what is right, which is to ensure that both the Federal Election Campaign Act of 1974 and the Bipartisan Campaign Reform Act of 2002 are properly interpreted and enforced. I welcome the efforts made by President Bush, and the Republican National Committee to encourage enforcement of the law regarding 527 groups engaged in federal political activities. Support for enforcement is welcome no matter the reasons for it. Just as some former opponents of campaign reform now favor enforcement actions by the FEC, some of those who in the past urged enforcement of the law against 527 groups have suddenly changed their tune. Let me read you a portion of a letter sent to the Department of Justice asking for a <u>criminal</u> investigation of a 527 group which was proposing to run advertising and conduct voter

registration for the purpose of influencing federal elections and which had failed to register with the FEC as a federal political committee.

> [It has} begun to raise $25 million so that this group can finance issue advocacy advertisements and get-out-the-vote activities. This organization plans to finance these activities from donations raised outside of the Federal Election Campaign Act's ("FECA" or the "Act") source limitations and amount restrictions, and without regard to the FECA's registration and reporting requirements. The result is an organization that is claiming tax-exempt status as a "political organization" under Section 527 of the Internal Revenue Code, but which is willfully refusing registration and reporting expenditures and contributions received.

This letter came from Democratic election law attorney Bob Bauer and his law firm Perkins Coie in 1999, objecting to a 527 group created by Representative Tom Delay. I agree with Mr. Bauer's analysis of the application of federal campaign finance laws to 527s as stated in this letter. Unfortunately, Mr. Bauer and his law firm are now representing 527 groups who want to engage in the sort of activity which they argued only a few years ago was "illegal" and required criminal investigation. I would like to insert a copy of this letter into the record at this point.

What this letter proves is that it is foolish for anyone - including Members of Congress or Commissioners of the FEC - to make decisions on enforcing the campaign finance laws based on perceptions of short-term, inherently changeable, partisan considerations. While partisan calculations are going to change over time, and then may change again, the fact is that the only appropriate basis for campaign finance laws is to carry out the meaning and intent of Congress in passing the statutes.

The Bipartisan Campaign Reform Act proved, in a bipartisan way, that we care about making sure that political power in this country does not lie solely in the hands of big corporations, labor unions and the wealthiest of the wealthy. We need to uphold and build upon past reforms – and not pursue ways to unravel them.

I would like to thank you again Mr. Chairman for holding these hearings.

I urge the Committee and the Congress to support S. 271 and to oppose any weakening or poison pill amendments. I would be happy to answer any questions you might have.